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ABSTRACT

This paper focuses on the status of federal-state relationships during the first year of implementing the No Child Left Behind Act (NCLB). It begins with a discussion of the literature on federal-state relations and the role of the federal government in that system. It then compares NCLB to its predecessor, pointing out where the two laws diverge and how they differ in enforcement mechanisms. In the third section, the paper explores the Bush administration's concept of federalism and the factors that are guiding its decisions in education. The fourth section analyzes how federal and state policies interact, focusing on how they conflict or reinforce each other. The paper concludes with a discussion of the implications for the future of NCLB and suggestions for future research. The NCLB has required many changes that states may not be prepared to implement. States may not have the assessments they need or the data management systems in place to handle the data requirements. To implement the changes required by the NCLB will require political support from state and local officials, coordination and cooperation across all levels of government, local buy-in, and professional and technical expertise to interpret, administer, and manage the new programs and data systems. However, the political support and professional expertise needed to carry out these requirements varies widely across the states. (Contains 4 tables and 34 references.) (SLD)

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IMPLEMENTING A MAJOR EDUCATIONAL REFORM NO CHILD LEFT BEHIND AND FEDERAL-STATE RELATIONSHIPS FIRST IMPRESSIONS

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Implementing A Major Educational Reform
No Child Left Behind and Federal-State Relationships
First Impressions[1]

January 8, 2003 marked the one-year anniversary of the No Child Left Behind Act. In a press release by Representative John Boehner, Chair of the Committee on Education and the Workforce, the 10 Republican members of the committee praised the law as "reinvigorating the ways teachers teach and students learn" and asserting that the plan ". . . is well on the way to empowering parents, helping children learn to read at an early age, and granting unprecedented new flexibility to local school districts while demanding accountability." To commemorate the event, there was a celebration at the White House, and the first five approved state accountability plans were released by the US Department of Education (DOE). Democrats issued their own press release, claiming that the success of NCLB was threatened because the administration "is failing to call for the funding required by the law and is also implementing the regulations in a manner inconsistent with the way the law was approved by Congress" (Miller, January 8, 2003).

Both parties agree on continuing along the path of standards-based reform and accountability for student achievement even if there are ideological differences on priorities and Democrats make increased accountability contingent on funding. For the Republicans, NCLB is an opportunity to provide flexibility, real or otherwise, to the states, and to promote particular policy goals such as supplemental services and expanded choice options. For the Democrats, NCLB is not only about accountability, but also a means to increase funding for public schools and to target that increase on those schools with high concentrations of low-income students. Both view providing parents with information on school performance as a way to bring about change, but differ in how this change should occur. Republicans believe that empowering parents with more options about their child's education will improve achievement. The Democrats, on the other hand, believe that information on the performance of schools will empower parents to push for changes in their schools and districts.

To achieve the goals of either the Democrats or Republicans will require cooperation between federal, state, and district officials. Implementation of NCLB takes place within a federal system where traditionally the federal role has been limited and to influence education and entice local cooperation required strong incentives or extensive federal oversight. In this paper, we argue that NCLB is testing the limits of the federal system with a fundamentally different model—one that assumes that by centralizing rules, educational policy, institutions, and practice can be rapidly changed to accommodate new requirements.

This paper focuses on the status of federal-state relationships during the first year of implementing NCLB. We begin with a discussion of the literature on federal-state relations and the role of the federal government in that system. Next, we compare NCLB

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to its predecessor, pointing out where the two laws diverge and how they differ in enforcement mechanisms. In the third section, we explore the Bush administration's concept of federalism and the factors that are guiding its decisions in education. The fourth section analyzes how federal and state policies interact, focusing on how they conflict or reinforce each other. We conclude with a discussion of the implications of our findings for the future of NCLB and suggestions for the direction of future research.

Literature Review

NCLB raises questions about how federal, state, and local policies will interact—i.e., conflict or reinforce each other. The NCLB rearranges relationships between the federal government and the states by expanding federal control in some areas and decentralizing control in others. For example, it outlines specific sanctions for low performing schools and gives extreme importance to the attainment of academic proficiency as defined by the states, but allows for quite divergent proficiency standards across states. It sets implementation timelines and defines a specific approach to testing to bring states into compliance with higher academic standards without corresponding attention to the mechanisms by which these strategies will influence teaching and learning. Since each level of government typically has its own priorities and decision-making rules, institutional arrangements at the state and local levels may either facilitate or constrain the implementation of the federal Title I expectations. NCLB furthers a system of regulatory federalism (Cibulka, 1996) where the national government determines policy priorities and then gives the state and local government the responsibility for implementation. One of the consequences of regulatory federalism has been the institutional incapacity of school systems to act decisively with a set of reforms that respond to demands for change coming from the environment (Cibulka, 1996). To achieve many of the objectives of NCLB will involve more federal intervention in core areas traditionally under local control, such as the curriculum, testing, and teacher qualifications (Kincaid, 2001).

Researchers that have examined the federal role vis-à-vis the states have found that the conditions under which a program or policy can be made operational varies according to the type of policy. Conflict was greater when state and local officials were asked to carry out responsibilities that were different from what they might have initiated on their own and cooperation was facilitated when policies reinforced local priorities. This view of federalism assigns different responsibilities to different levels of government, arguing that some policies and programs are more appropriately performed by the national government while others are more appropriately assigned to local governments (Peterson, 1995; Peterson, Rabe, & Wong, 1986).

In education, the federal government has played a limited role, providing additional resources targeted on particular types of students. Still, implementation of federal education programs required the cooperation of local officials and the development of a professional cadre of people committed to the policy and the program. Intergovernmental conflict arose when the administration of programs was politicized,

there were serious economic or fiscal difficulties, or administrative officials lacked autonomy vis-à-vis their elected officials. (Peterson, Rabe, & Wong, 1986).

Odden (1991) found that policy implementation evolved as programs matured. In the early stages of implementing a new policy or program, there was often bureaucratic ineptitude, the misuse of resources, or concessions to special interests as well as conflicts between local priorities and federally initiated programs (Odden, 1991; Peterson, Rabe, & Wong, 1986). As programs matured, conflict was replaced with cooperation and implementation was facilitated by the development of internal professional expertise and an external political support structure, which worked formally and informally to put a program in place (Odden, 1991).

Years of research on the implementation of reform has found a process of mutual accommodation where policies from above are shaped to fit local circumstances, while, at the same time, local conditions change in response to reform (Loveless, 1999; Odden 1991; Peterson, Rabe, & Wong, 1986). Local implementation was shaped by local context (Murphy, 1971; Kaestle & Smith, 1982; Knapp, Stearns, Turnbull, David, & Peterson, 1991). For example, in a study of tracking reform, Loveless (1999) found that different tracking patterns emerged based on organizational, institutional, and other properties that structured local decision-making. The implementation of standards, accountability, and assessment policies also varies across states, depending on the local context. Another study found that high school graduation exams were more common in states that allocate less money than the national average for schooling, in states with more centralized governments, and in states with higher percentages of African Americans, Latinos, and low-income students (Amrein & Berliner, 2002).

Similarities and differences between 1994 IASA and 2001 NCLB.

Title I of the Elementary and Secondary Education Act (ESEA) was the primary federal education program designed to assist educationally and economically disadvantaged students. It provided nearly $8 billion in support each year and served over 10.5 million students in 90% of the nation's school districts (Citizen's Commission on Civil Rights, 1999). Since its inception in 1965, it targeted additional resources to high poverty schools with the express purpose of reducing the disparities in educational achievement between at-risk students and their more advantaged peers (Vinovskis, 1999). This bill represented the federal government's major commitment to educational equity.

The No Child Left Behind Act (NCLB), which reauthorized ESEA, is built squarely on ideas in the Clinton administration's1994 Improving America's Schools Act (IASA).[2] IASA was notable for mandating that challenging standards apply to all students, including those receiving Title I services. States were required to develop content and performance standards, adopt annual assessments that measured student progress against those standards, and hold schools accountable for the achievement of all students.

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[2] For a detailed comparison of the 1994 IASA and the 2001 NCLB requirements, see Title I Report (January 2002). Title I changes in the 2001 ESEA reauthorization. *Title I Report, Special Supplement.*

Schools and districts receiving Title I funding were required to demonstrate Adequate Yearly Progress (AYP) that was "continuous and substantial" and that linked progress to performance on assessments (Sec. 1111(b)(2)(B)). It left it up to the states to define AYP. State Educational Agencies were required to provide support to districts and schools and help them develop the capacity to comply with the law. Districts were required to identify schools in need of improvement that had not made adequate progress as defined by the states and were given the authority to take corrective action against a school. The actions a district could take included "making alternative governance arrangements such as the creation of a public charter school," decreasing school-level decision making authority, reconstituting the school staff, or authorizing students to transfer to other public schools served by the LEA, among others (Sec. 1116(c)(5)(i)). There were no provisions for supplemental services and very little enforcement of these ideas under the Clinton administration.

Table 1: Summary of Title I Changes in the 2001 ESEA Reauthorization

Policy Changes
• Emphasizes equal educational outcomes
• Expands test-based accountability
• Imposes implementation timelines
• Imposes timelines for improving student achievement
• Mandates specifics sanctions for schools not performing well
• Specifies consequences for noncompliance; reduces use of timeline waivers
Federalism & Governance Implications
• Expands the role of the federal government in education
• Alters federal-state relationships concerning who controls education
• Effects state level governance arrangements
• Seeks to reform entire educational systems

While many of the NCLB concepts were present in IASA, NCLB departs in significant ways (see Table 1 for a summary of changes). NCLB raises the expectations and goals of Title I policy by emphasizing equal educational outcomes. Indeed, an important goal of NCLB is to close "the achievement gap between high- and low-performing children, especially gaps between minority and non-minority students, and between disadvantaged children and their more advantaged peers" (Section 1001, 3). To narrow the achievement gap, NCLB expands the federal role in education by imposing strict timelines for improving the achievement of disadvantaged students and mandating specific sanctions for schools not performing well. It also expands the testing requirements, calling for testing students annually in grades 3-8 in reading and mathematics and testing LEP

students in English after three years in the educational system. States are responsible for developing and adopting these tests, but they must implement the new tests according to a schedule established by the federal government.[3]

States must also adhere to federally determined timelines for identifying failing schools and improving student achievement, establishing adequate yearly progress (AYP) goals, and ensuring teacher quality. By 2005-06, 100 percent of teachers in core academic subjects must be "highly qualified." States must establish performance standards and define AYP goals to ensure that all students, including major demographic subgroups, reach "proficiency" within 12 years (2013-14). While IASA required states to disaggregate assessment results, NCLB added subgroup accountability for economically disadvantaged, disabled and LEP students, and for students from major racial and ethnic groups. Schools failing to make AYP targets for any subgroup for two consecutive years will be identified as "in need of improvement" and thus, subject to a series of sanctions, ranging from public school choice to school reconstitution. Sanctions are no longer at the discretion of local districts.

In addition to the policy changes, NCLB affects the politics of education, and in doing so, raise fundamental issues about who controls education. First, it alters federal-state relationships by expanding the role of the federal government further into a primary function of state and local governments. NCLB now decides what constitutes a failing school and what should be done about it. It dictates the pace of change by setting timelines for implementation and school improvement and requires participation in the NAEP as one measure of how well schools are doing. Second, it affects governance arrangements within states by favoring state education agencies and chief state school officers over the governor, legislature, and state and local boards. By directing federal funds to state education agencies, it gives them the authority to administer the federally funded programs without necessarily consulting with elected officials and to make commitments with the federal government without considering how their decisions might affect state policy and state budgets (Michelau & Shreve, 2002). Finally, instead of reforms that target special populations, NCLB seeks to reform entire educational systems. Implementation is no longer about whether a particular program is being implemented, but how various programs work together to improve schools and districts (Odden, 1991).

It is unclear how the federal government will enforce the new requirements, particularly since the new demands vastly exceed what they have been able to enforce in the past. Early indications are that the Bush administration intends to strictly enforce the new requirements, particularly the implementation timelines. The presumption of this administration is that unless the administration takes a firm stand, states will "game the system." Nonetheless, under NCLB some areas will be easier to enforce than others. According to the Director of Policy in the Office of the Under Secretary:

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[3] The timeline mandates assessment of English language learners starting in school year 2002-03 and administering annual statewide tests in mathematics and reading/language arts to all students in grades 3 through 8 by school year 2005-06.

> We recognize that we are limited by the statue in some respects and we can't go after states that don't make adequate yearly progress on that front. But, in terms of actually doing what the law requires—providing choice and not playing games—that there is a serious commitment to seeing the law implemented well (Wolfe, 12-10-02).

Early enforcement of NCLB has focused on compliance monitoring and meeting technical requirements while allowing for quite divergent systems across the states. For example, NCLB requires states to administer performance tests that produce individual student test scores. Federal officials made it clear that they would not grant waivers to states from meeting this requirement. This forced Maryland to abandon its performance based assessment system known as the Maryland School Performance Assessment System (MSPAP). The MSPAP, which sampled student performance, only provided reliable scores at the school level.[4] The new test, the Maryland School Assessment (MSA) program, will provide individual student scores. It was first administered in spring 2003. The MSA is a combination of norm-reference and criterion-reference test items and includes both multiple choice and brief-answer questions. In contrast, the MSPAP, which was designed to test critical thinking skills, used only criterion-referenced tests and required short and long answers in essay format.

One of the major challenges is to bring states into compliance with the IASA requirements. Under IASA, enforcement by the federal government was lax as states were granted broad waivers through the Education Flexibility Partnership Program. When NCLB was enacted, only 19 states had fully approved standards and assessment systems mandated six years earlier under the 1994 law (Robelen, 2002). DOE had granted timeline waivers to 28 states and entered into compliance agreements with five states. Since the new administration has been in office, it has worked diligently to bring more states into compliance with IASA (Jackson, 12-10-02; Sims, 12-10-02) and has increased to 21 the number of states in compliance (see Table 2).

States that fail to meet the extended timelines for implementing the 1994 requirements are subject to the withholding of some Title I administrative funds. While the 1994 legislation was not specific about the amount of administrative funds that could be withheld, the 2001 legislation specifics that DOE must withhold 25 percent of the state's administrative funds until the state meets the 1994 requirements, an amount that could be significant for states. The granting of waivers is likely to decrease since NCLB specifies timelines for states to meet the new requirements and allows for one-year extensions of these deadlines only in the event of "natural disaster or a precipitous and unforeseen decline in the financial resources of the State." Many states are now confronting what they define as a precipitous decline in financial resources.

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[4] This is the same sampling method the federal government uses for the National Assessment of Educational Progress (NAEP), but no longer permitted at the state level.

Table 2: Status of States' Compliance with 1994 IASA Title I Requirements, March 2003

Compliant (21)	Timeline Waivers (20)	Timelines Expired (6)	Compliance Agreements (5)
Colorado	Alaska: 2-28-03	Florida: 12-1-02	Alabama: 4-8-05
Connecticut	Arizona: 8-31-03	Illinois: 12-31-02	District of Columbia: 3-29-05
Delaware	Arkansas: 11-30-03	Michigan: 2-28-03	Idaho: 3-29-05
Indiana	California: 11-30-03	Nebraska: 2-28-03	Montana: 4-5-05
Kansas	Georgia: 6-30-03	Utah: 6-30-02	West Virginia: 2-4-05
Kentucky	Hawaii: 5-30-03	Washington: 12-31-02	
Louisiana	Iowa: 12-1-03		
Maine	Minnesota: 1-31-04		
Maryland	Mississippi: 6-1-03		
Massachusetts	Nevada: 7-20-03		
Missouri	New Jersey: 6-30-03		
New Hampshire	New Mexico: 12-12-03		
New York	North Dakota: 8-31-03		
North Carolina	Ohio: 1-22-04		
Oregon	Oklahoma: 9-21-03		
Pennsylvania	Puerto Rico: 1-2-04		
Rhode Island	South Carolina: 6-30-03		
Texas	South Dakota: 6-30-03		
Vermont	Tennessee: 11-30-03		
Virginia	Wisconsin: 11-6-03		
Wyoming			

Source: Education Week (April 17, 2002). 1994 ESEA: The state of state compliance. Education Week, 21 (31), p. 29; US Department of Education (February 12, 2003) www.ed.gov/offices/OESE/saa/state_chart.html retrieved on 3/23/03.

Currently, there are seven states where the timeline waiver has expired and in the remaining 19 states, it will expire within the next 9 months (Table 2). Following the Congressional mandated April 8, 2002 deadline for granting additional waivers or entering into compliance agreements, DOE insisted it would reject further requests for waivers (Robelen, 2002) and would start to withhold state administration monies to states that are out of compliance (Sims, 12-10-02). So far this has not happened even though in one state—Utah—the waiver expired on June 30, 2002. Their plan has not yet been approved nor has DOE taken action to withhold federal funds from the state.[5]

Examining the reasons states were out of compliance highlights the difficulty of bringing states into compliance with IASA. In an audit of the accountability and assessment provisions of the 1994 IASA, the General Accounting Office (2002) found that noncompliant states more commonly had not meet two Title I requirements—assessing all students and breaking out assessment data by subcategories of students (p. 12). These are two key components under NCLB. Other states had more intractable problems, such as assessments that were not aligned with standards, and most states found compliance more difficult when there was inadequate funding (GAO, 2002). Compliance was

[5] The status of state compliance with the 1994 law can be found on the U.S. Department of Education web site, www.ed.gov/offices/OESE/saa/state_chart.html. Conversations with DOE officials confirmed that no final action had been taken against states where the timeline waiver expired (Wooten, 3-7-03).

facilitated by the support of state and local officials, coordination between staff in different offices and across levels of government, and when the state had the necessary technical expertise. The report concluded that states were not well positioned to meet the requirements of NCLB.

In reality, DOE may have to provide a great deal of flexibility to states if they are to approve their accountability plans. There is some evidence that DOE may be doing that. The recently approved five state plans were notable for their variety, particularly in how states meshed their existing accountability systems with the new requirements. New York and Massachusetts retained a performance index in their accountability systems that captures movement between levels of performance while also including the federally mandated AYP targets. Ohio and Indiana overlaid the AYP requirements on their accountability systems. Ohio will determine accountability on the basis of multiple measures—the proportion of Ohio report card indicators met, a performance index scores, adequate yearly progress, and a measure based on individual student achievement gains over time (State of Ohio, 2003). Indiana retains five performance categories and places schools that fail to make AYP for two consecutive years in the middle category of Academic Progress (Indiana Department of Education, 2003). In addition, DOE made concessions when states stood firm on their policies and decisions. For example, New York, which requires high school students to pass the states' regents exams in mathematics and English by grade 12, convinced DOE officials that students should continue to be allowed to take the test multiple times and to count only the last test for accountability purposes.

The real enforcement and monitoring challenge will come after DOE conducts the peer reviews of state accountability plans and goes into the field to monitor implementation of those plans. For the most part, states are good at describing what the law requires. As one DOE official put it: "The implementation of that doesn't always manifest itself in the way that the paper (i.e., accountability plans) reflects. And I think that is going to be where the real issues are going to be raised." (Wilhelm, 12-10-02).

NCLB also changes the role of DOE by requiring them to participate in helping schools improve. The Interim Director of Title I put it this way:

> We have never had to step up to the plate. We have always been able to talk from our ivory tower about how schools should be changing. I think the thing that makes this law different is that all of us have a responsibility to insure that it happens (Jackson, 12-10-02).

Under NCLB, DOE has moved from compliance monitoring to thinking about how to provide technical assistance. To meet this challenge, DOE created the Instructional Change Unit within the Title I program which is designed to work with states to help them build capacity to provide technical assistance to schools (Jackson, 12-10-02). To provide support for choice initiatives and the policy priorities of the administration, DOE established the Office of Innovation and Improvement. The goal of this office is to

improve the supply of educational choices by encouraging the development of Charter Schools and to nurture educational innovations (DOE official, 1-17-03).

The Bush Administration and Federalism

Traditional views of federalism see the federal government stepping in when state and local governments would not otherwise provide a public service at sufficient levels (Peterson, Rabe, & Wong, 1986). Thus, for example, categorical programs targeted funds on disadvantaged students and students with disabilities that weren't adequately served by local educational agencies. Conservative views of federalism emphasize the prerogatives of state and local governments as the legitimate sources of policy and support the devolution of social programs to the states. This view supports local decision-making without interference from the federal government and assumes that states will invest funds in ways that will achieve particular policy goals. At times, Republicans have advocated federal intervention to improve K-12 education, especially to meet US economic needs, something both the Eisenhower and Reagan administrations did.

With NCLB, the objectives of Republican reformers have changed from limiting the federal bureaucracy and decentralizing decisionmaking to the states towards an activist bureaucracy promoting particular policy goals. However, the rationale of the Bush administration for reversing long-held Republican doctrines and expanding the role of the federal bureaucracy in education has not been fully stated. He has dodged the issue of local control by asserting that the law gives local school districts greater flexibility in the use of federal funds and by arguing that the new testing requirements do not dictate what is taught or how it is taught (Godwin & Sheard, 2001). Since Bush campaigned on an education agenda, NCLB is fulfilling his campaign promise. It is also his only domestic policy accomplishment to date and an important issue of political symbolism. Politically, NCLB allows the administration to say it has done something to improve education, an issue that the American public cares about.

Several provisions in NCLB also appeal to the ideological agenda of the administration's constituencies. Support for supplemental services and public school choice are the prime examples. Supplemental services are additional academic instruction provided outside the regular school day by public and private organizations (U.S. Department of Education, 12-12-02). Public school choice allows students attending schools identified as in need of improvement to transfer to another public school within the local educational agency. Generally, support for these policies reflects a faith in market approaches that is a consistent theme of conservative politics. There is a belief, for example, within the administration that supplemental services will improve student achievement and help move schools out of improvement. One official in the Department of Education described it this way:

> I have heard comments such as, 'supplemental services is a program that will drain resources away from schools that need them the most.' It was very disheartening to hear that. My response is, supplemental services is a wonderful

> opportunity for a partnership between families, schools, and the service provider. Schools shouldn't see it as a threat because not only will supplemental services help the child meet higher academic achievement goals or increase their performance, but as a consequence, it is going to bring schools out of improvement status, as that student achievement goes up and school should be welcoming the opportunity for supplemental services and it's not taking money away because a parent can choose the supplemental services or choice, but a parent can't have both. And so, the funds that are paid to a supplemental service provider, who may be a private provider, but the benefits accrue to the school. (Yecke, 11-25-02)

Implicit in this model of student and school improvement is the assumption that supplemental service providers will know what to do, will do it better than the schools themselves could do, and will be able to do what schools couldn't—raise the achievement of students in consistently poorly performing schools. It also assumes there are other benefits that accrue from supplemental services, such as the partnership between the provider and families and schools. Neither of these assumptions is based on evidence since there were no model of this program in existence prior to NCLB.

The Bush administration has gone to great lengths to provide legitimacy for NCLB and its preferred education policies since political legitimacy is one measure of effectiveness. It placed great importance on all states submitting their accountability plans on time, even though the content of those plans was unknown. The administration has also launched a very visible and extensive public relations campaign to promote the legislation. This includes substantive activities—publications, guidebooks, and information disseminated through the NCLB website—to the mundane—publishing a NCLB anthem and putting little red schoolhouses outside the Department of Education. Secretary Paige embarked on a 25-city tour across America to promote NCLB (April – September 2002). In speeches he delivered on this tour, Paige stressed the goals of "accountability, results, teacher quality, and reading programs that work" and the unique role of the Bush administration in "enacting the most sweeping change in education in 35 years"(DOE press release, 6-10-02). According to Paige, "Never before have we as a nation made a commitment to all children in our public schools that every one of them can and will learn. Every single child. Regardless of race, income or zip code" (DOE press release, 6-10-02).

Federal-State Relations: Conflict or Cooperation?

As states begin to implement NCLB, we searched for areas of, and sources of, intergovernmental cooperation/accommodation versus areas of intergovernmental conflict. Our research finds that while there has been some intergovernmental collaboration and cooperation, the ambitious expectations, strict timelines, and exacting set of regulations and requirements combined with the fiscal constraints operating on states and districts impose significant burdens on implementation. In addition, the administration's approach to working with particular groups of stakeholders may limit

their cooperation and support in the future, particularly if fiscal constraints are not eased. In this section, we discuss professional compliance with early implementation challenges, the growing fiscal constraints on states and weakening political support for NCLB, and the limited flexibility of the final regulations.

Professional compliance: Intergovernmental coordination and cooperation between state educational officials and DOE administrators facilitated implementation at the state level and helped states meet some of the initial timeline requirements. As already noted, the five state plans that were on the "fast track" for approval were notable for their variety. Apart from the public relations benefits their approval bestowed on the administration, these plans provided states with a measure of what DOE approved, what was rejected, and an ideal of where states should be that states could refer to as they developed their own plans. The Council of Chief State School Officers used the plans to provide technical workshops to help state assessment directors on their own accountability workbooks (Sullivan, 1-22-03).

State education officials were also very responsive to the federal requirement that they submit the Consolidated State Application Accountability Workbook to DOE by the January 31, 2003 deadline. All fifty plans were submitted on time, a remarkable accomplishment given that states vary in the degree to which their current state accountability plan align with the NCLB requirements and the differences in their political structures and governance arrangements in education. Whether this reflects a compliance orientation or real progress in implementing NCLB will be clarified as DOE conducts peer reviews and determines whether to approve the final plans.

Our analysis of the consolidated accountability applications for 41 states shows where states are in the process of completing their state accountability plans. The application included a worksheet, which summarizes the status of ten principles required by the application. Each principle contained between one and six elements (see the appendix for a summary of the principles and elements). For each element, states indicated if they were working to formulate a policy, had a proposed policy and were waiting for state approval, or had a final state policy. A summary of the status of the required principles is presented in Figure 1. This figure presents the average percentage of the required elements for each principle. Table 3 presents a summary of the status of the required elements.

Our analysis of 41 state plans indicates little variation in state self-reported status of completed principles (see table 3). Among the 41states, the number of states with a final policy for each element ranged from 16 (39%) to 33 states (80.5%); states that were waiting for state approval of a proposed policy ranged from 3 states (7.3%) to 15 states (36.6%); and states that were still working on formulating a policy ranged from 3 (7.3%) to 11 states (26.8%).

Figure 1: State Accountability Plans, average percentages for each principle (based on state accountability plans in 41 states)

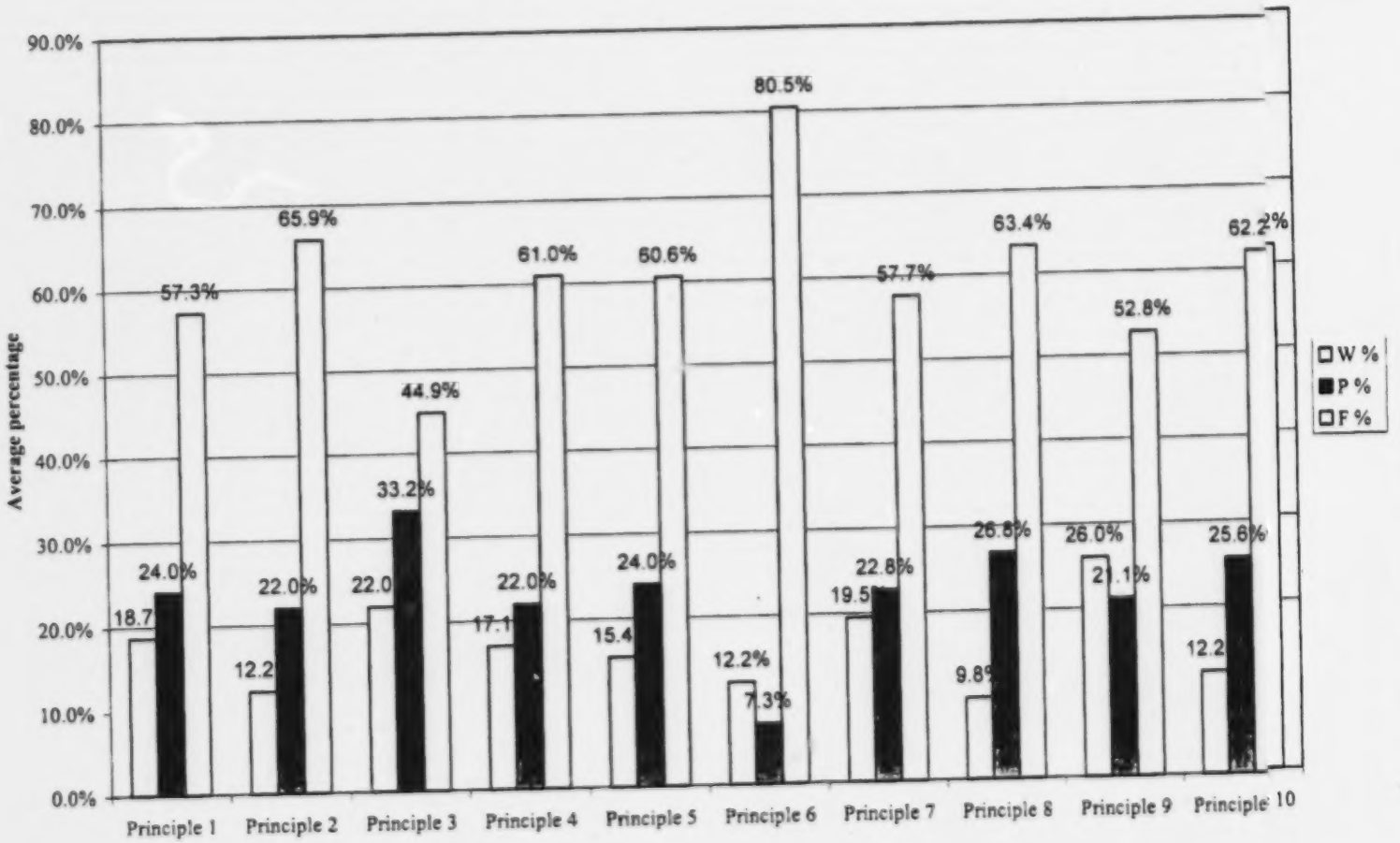

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Table 3: Summary of Required Elements for State Accountability System (n=41): Number and percent of states working to formulate a policy (W); proposed policy (P); and final policy (F), 2003.

Principle	# W	% W	# P	% P	# F	% F
Principle 1		**18.7**		**24.0**		**57.3**
1.1	7	17.1	10	24.4	24	58.5
1.2	5	12.2	12	29.3	24	58.5
1.3	4	9.8	7	17.1	30	73.2
1.4	9	22.0	12	29.3	20	48.8
1.5	9	22.0	7	17.1	25	61.0
1.6	12	29.3	11	26.8	18	43.9
Principle 2		**12.2**		**22.0**		**65.9**
2.1	4	9.8	5	12.2	32	78.0
2.2	6	14.6	12	29.3	23	56.1
2.3	5	12.2	10	24.4	26	63.4
Principle 3		**22.0**		**33.2**		**44.9**
3.1	6	14.6	13	31.7	22	53.7
3.2	10	24.4	13	31.7	18	43.9
3.2a	9	22.0	13	31.7	19	46.3
m	10	24.4	14	34.1	17	41.5
3.2c	10	24.4	15	36.6	16	39.0
Principle 4		**17.1**		**22.0**		**61.0**
4.1	7	17.1	9	22.0	25	61.0
Principle 5		**15.4**		**24.0**		**60.6**
5.1	4	9.8	11	26.8	26	63.4
5.2	8	19.5	15	36.6	18	43.9
5.3	5	12.2	4	9.8	32	78.0
5.4	6	14.6	9	22.0	26	63.4
5.5	9	22.0	12	29.3	20	48.8
5.6	6	14.6	8	19.5	27	65.9
Principle 6		**12.2**		**7.3**		**80.5**
6.1	5	12.2	3	7.3	33	80.5
Principle 7		**19.5**		**22.8**		**57.7**
7.1	7	17.1	14	34.1	20	48.8
7.2	9	22.0	8	19.5	24	58.5
7.3	8	19.5	6	14.6	27	65.9
Principle 8		**9.8**		**26.8**		**63.4**
8.1	4	9.8	11	26.8	26	63.4
Principle 9		**26.0**		**21.1**		**52.8**
9.1	10	24.4	9	22.0	22	53.7
9.2	11	26.8	9	22.0	21	51.2
9.3	11	26.8	8	19.5	22	53.7
Principle 10		**12.2**		**25.6**		**62.2**
10.1	5	12.2	11	26.8	25	61.0
10.2	5	12.2	10	24.4	26	63.4
Range	4-12		3-15		16-33	

States were most likely to have a final policy on principle 6 (accountability system is based primarily on academic assessments). This is not surprising since states were required to develop assessments in three grades under the 1994 law. They were least

likely to have a final policy on principles 3 and 9, which pertain to developing a method to determine AYP and building a reliable and valid accountability system. Both of these principles require a number of difficult psychometric decisions, such as the use of consistency rules, test linking, or equating one test to another as states add new grades to their assessment system. This finding suggests that many states may not have the capacity needed to deal with technical assessment issues. Leading states, such as Virginia and New York, have technical advisory panels made up of psychometricians. However, since there is a limited supply of psychometricians, and many serve on several advisory panels, some states may have difficulty finding the expertise they need. In short, the technical demands imposed by NCLB appear to exceed many states' capacity to handle complicated psychometric problems. This poses a serious risk that the tests created under the act may not meet the important requirements of the law that the test reflect what is taught and are valid indicators of student achievement.

An analysis of the separate elements indicates that few states had a final policy for elements 1.6 (accountability system includes rewards and sanctions) and 5.2 (the accountability system holds schools and LEAs accountable for the progress of student subgroups). This is also not surprising, since the required interventions, particularly providing supplemental services, were not something states had done before. This requirement is highly unpopular with many educators and there is no research basis for what is likely to work. As already noted, the GAO report (2002) found compliance with subgroup accountability difficult for states to meet under the 1994 law.

We also found states that were in compliance with the 1994 requirements were more likely to have a final policy than states that were granted timeline waivers or had compliance agreements (see Table 4). This was the case across all principles, with more non-compliant states still working to formulate policies. The largest differences between compliant states and non-compliant states were for principle 6—the accountability system is based primarily on academic assessments. Among compliant states, 94.4% versus 69.6% of non-compliant states had a final policy on this principle. Twenty-one percent of the non-compliant states were still working to formulate a policy on principle 6, whereas none of the compliant states were. Since all states, when considered together, were most likely to have a final policy on principle 6, this finding suggests huge differences between compliant and non-compliant states in meeting the basic requirements of the law. Again, the technical challenges of implementing a test based accountability system may exceed the capacity of some states. There was little difference between the two groups of states on principle 4 and 8, which refer to having an accountability system that determines annual progress and holds students, schools and districts accountable. While this finding suggests general support for accountability, support for a test-based system is less clear.

Fiscal constraints: Even though states have made progress in developing their state accountability plans to comply with NCLB, current state fiscal constraints threaten to erode state commitment to the law and complicate implementation efforts. States are implementing NCLB at a time when there are major budget shortfalls, yet there is little evidence that the federal government will provide much fiscal relief. The National

Table 4: Comparison of All States (n=41) vs. IASA Compliant States (n=18) vs. Non-IASA Compliant States (n=23): Percent working to formulate a policy (W); proposed policy (P); and final policy (F), 2003.

Principle	State Status	% W	% P	% F
Principle 1	All States	18.7	24.0	57.3
	IASA Compliant	7.4	26.9	65.7
	IASA Non-Compliant	27.5	21.7	50.7
Principle 2	All States	12.2	22.0	65.9
	IASA Compliant	1.9	22.2	74.1
	IASA Non-Compliant	20.3	21.7	58.0
Principle 3	All States	22.0	33.2	44.9
	IASA Compliant	10.0	40.0	50.0
	IASA Non-Compliant	31.3	27.8	40.9
Principle 4	All States	17.1	22.0	61.0
	IASA Compliant	11.1	27.8	61.1
	IASA Non-Compliant	21.7	17.4	60.9
Principle 5	All States	15.4	24.0	60.6
	IASA Compliant	5.6	25.0	69.4
	IASA Non-Compliant	23.2	23.2	53.6
Principle 6	All States	12.2	7.3	80.5
	IASA Compliant	0.0	5.6	94.4
	IASA Non-Compliant	21.7	8.7	69.6
Principle 7	All States	19.5	22.8	57.7
	IASA Compliant	7.4	25.9	64.8
	IASA Non-Compliant	29.0	20.3	50.7
Principle 8	All States	9.8	26.8	63.4
	IASA Compliant	5.6	27.8	66.7
	IASA Non-Compliant	13.0	26.1	60.9
Principle 9	All States	26.0	21.1	52.8
	IASA Compliant	14.8	25.9	59.3
	IASA Non-Compliant	34.8	17.4	47.8
Principle 10	All States	12.2	25.6	62.2
	IASA Compliant	0.0	27.8	72.2
	IASA Non-Compliant	21.7	23.9	54.3

Conference of State Legislatures (2003) reported that 36 states were facing budget gaps in their fiscal year 2003 budgets and in thirty-seven states, spending exceeded budgeted levels. More recent reports indicate that virtually all states have serious budget shortfalls, and since education makes up a major portion of state budgets, education budgets are threatened. States have made or are making cuts to their elementary and secondary education program to help balance the budget. In California, a state with one of the largest budget shortfalls, the governor has made some across the board spending reductions, asked state agencies to trim 20% from their budgets, and is seeking wage

reductions (NCSL, 2003). The Governor of Ohio signed an executive order in March 2003 that cut funding for the Ohio Department of Education by $9.3 million and state aid to schools by $90.6 million (Ohlemacher & Okoben, 2003). The governor, a Republican, is battling a Republican controlled legislature refusal to approve a budget that included increases in taxes. The budget cuts extend to districts, which have been forced to make painful decisions to lay off teachers, shorten the school year, or reduce class size (Gewertz & Reif, 2003).

In light of state budget shortfalls, questions over NCLB funding levels are becoming political ones. NCLB came with promises of increased spending for Title I, and indeed, in the first year (fiscal year 2002) there was an 18% increase in Title I grants to local educational agencies and a 17% increase overall for elementary and secondary education (Table 5). For fiscal year 2003, there was a 10% increase in Title I appropriations, but only a 3% increase in elementary and secondary education appropriations. Proposed appropriations for FY 2004 contain similar percentage increases to those in FY 2003. The Democrats argue that the administration's budget proposals break the promises made when NCLB was enacted to provide adequate resources for reform (Miller & Kennedy, 2003). The Republicans counter that "the federal government is now spending far more money for elementary and secondary education than at any time in our nation's history" (Boehner, 2003). This is true in absolute amounts but not in terms of the share of total school costs.

Table 5: Title I Grants to Local Education Agencies and Total Elementary and Secondary Education Appropriations, FY 1998 – 2004

Fiscal Year	ESEA Title I Grants to LEAS	% Increase From Prior Year	Total Elem. & Secondary	% Increase From Prior Year
1998	$ 7,375,232	1.09	$18,595,444	10.13
1999	7,732,397	4.84	21,413,447	15.15
2000	7,941,397	2.70	23,150,732	8.11
2001	8,762,721	10.34	27,974,746	20.84
2002	10,350,000	18.11	32,770,874	17.14
2003	11.350,000	9.66	33,676,616	2.76
2004 Proposed	12,350,000	8.81	34,874,488	3.56

Source: US Department of Education, Budget History Table: FY 1980 – present. Retrieved from www.ed.gov/offices/OUS/BudgetHistory/Edhistory.pdf

At the state level, how the costs of implementing NCLB balance out against the additional resources provided by the law is just beginning to be sorted out. Some states have estimated that the cost of implementing NCLB will be more than what the federal government provides. Two states—New Hampshire and Vermont provided cost estimates of the new regulations. The New Hampshire School Administrators Association (2002) estimated that, conservatively, implementing NCLB in New

Hampshire would result in a new financial obligation to the state. NCLB brings in about $77 per student on average while creating at a minimum $575.00 per student in new financial obligations, resulting in a 7.5:1 ratio of federal dollars to estimated costs (NHSAA, 2002). Vermont, which considered not participating in the federal program, based it decision in part on a similar analysis of the cost effectiveness of NCLB. This analysis estimated that the new law would require a minimum of $152.2 million in new expenditures by the state while the federal government provided a total of $51.6 million, a 3:1 ratio of federal money to state expenditures (Vermont Society for the Study of Education, 2002). Vermont estimated that the federal increase the state would receive under NCLB represented an increase of less than one-half of one percent of state expenditures on education.

The Maryland State Department of Education also estimated that the total cost of implementing NCLB will likely be more than the federal funds the state receives (Department of Legislative Services, 2002). The state and local districts will need to develop an infrastructure to support the new reporting requirements that includes the development of data collection, storage, and dissemination capacities that currently do not exist. State and local officials believe this cost will be substantial. Although the new test will cost less on a per pupil basis than MSPAP ($30 versus $35), the overall cost of developing and implementing the new MSA program are more since more students will take the test when the grade 4, 6, 7 and 10 tests are implemented (Department of Legislative Services, 2002). If the new law requires an increase in state funding for federal requirements at a time when most states cannot continue their basic state commitments, serious conflict is likely.

One Republican Congressional aide said it was too early to tell how the state shortfall would affect implementation of NCLB, adding that "if the state budgets are under pressure, certainly the federal budget is as much, if not more so because of the defense and homeland security commitments that state budgets don't have." (Congressional aide, 2-21-03). This aide believed that the funding for NCLB was enough to offset the costs of implementing the bill, especially if "you actually ask people to make better decisions with the money that they are getting." Echoing similar comments made by President Bush,[6] she said:

> It's not just a matter of how many resources you have. It's a matter of how you spend your resources. And if you are a failing school or a failing school district, you don't necessarily need a huge infusion of funds . . . It's also a matter of deciding how to better use those funds—be it on the curriculum, be it on better teachers, or you know, preparing your paraprofessionals. Be it maybe not focusing on a music program and instead using your music dollars for a reading program. There are just so many decisions—minute decisions that can be made at both the district level and actually at the school level. So that it's a matter again

[6] In a speech on January 8, 2003, President Bush said: "The issue is not just about money. We must spend money more wisely. We must spend money on what works. And we must make sure we continue to insist upon results for the money we spend." (Bush, 2003).

not just of level of resources but how you use the resources. (Congressional aide, 2-21-03).

Political support: It is unclear whether NCLB can muster the sustained political support among state elected officials necessary to insure implementation of NCLB, particularly since the specific requirements of the bill reflect last minute compromises few fully understood when enacted. Party alliance won't necessarily insure cooperation with the federal goals, especially when they conflict with local priorities. There is opposition to the new requirements that includes Republican states that supported Bush in the last election. The strongest resistance is from Nebraska, where officials consider education a state and local issue and view the new requirements as an unwarranted intrusion of the federal government in education (Greene, 2002).

Political support from state legislators is weak—the National Conference of State Legislatures opposed the legislation—and the nation's governors have raised concerns about the costs of NCLB. The National Governor's Association (NGA) recently released a policy statement, agreed to by both Republican and Democratic governors, that labels NCLB an unfunded mandate and calls for greater flexibility and additional funding to support NCLB. At the February 2003 winter meeting of the NGA, Bush indicated that fiscal relief for the states would not be forthcoming, citing the federal budget deficit and the costs of war as constraints on the federal budget. Instead he promised more flexibility for states on spending and asserted that his plan to eliminate taxes on corporate dividends would boost the economy. The governors, who generally support the intent of NCLB, approved a policy statement requesting additional funding for federal mandates. It states:

> The nation's Governors request that in fiscal year 2004 the federal government provide funding for federal mandates and programs. This action would minimize the adverse effects of the budget cuts that states would otherwise be forced to make. The fiscal assistance should include additional funding for the following federal mandates without placing additional mandates on states (NGA, 2003).

The Governors identified Homeland Security, Individuals with Disabilities Education Act (IDEA) and the No Child Left Behind Act as the federal mandates where there is a need for a more "responsive federal-state partnership" and additional federal funding. With NCLB, the Governors support "maximum flexibility for states and school districts to combine federal program dollars and pursue our own strategies for raising student achievement" (NGA, 2003). Since the Governors have led the movement for standards based reform since the early 1980s, there support is crucial to the implementation of NCLB.

The administration's rhetoric may also alienate the very groups whose cooperation is necessary to facilitate implementation. As states began to define what it meant to be proficient in reading and mathematics, Secretary Paige sent a sharply worded letter to the Chief State School Officers. In this letter, he accused some states of "trying to "game" the system for short-term benefits" and of lowering "the bar of expectations to hide the low performance of their schools" (Paige, 2002). He went on to say: "Thus, it is nothing

less than shameful that some defenders of the status quo are trying to hide the performance of underachieving schools in order to shield parents from reality" (Paige, 2002). This is a remarkable departure from the normal etiquette of American federalism.

Final regulations: The final regulations on NCLB, released in November 2002, have not eased the burden of implementation for states or districts and left states with little of the flexibility they had hoped for. In particular, states wanted more flexibility in determining AYP and to be allowed to continue to use indices that measure the extent to which schools and districts were making progress towards improving student achievement. Districts wanted more flexibility in identifying schools for improvement and implementing the student choice options. Districts were also concerned that the regulations would limit their flexibility to assign paraprofessionals to schools and programs and that the teacher qualifications would exuberate teacher shortages in critical areas, including special education, bilingual education, mathematics, and science.

In writing the regulations, the DOE was constrained by the specific requirements of the statue itself in some areas, and in other areas, the administration's policy priorities shaped the regulations. For example, DOE narrowly interpreted the issues of capacity and public school choice, mandating that lack of capacity does not preclude a district from offering public school choice to eligible students in schools identified for improvement. The regulations require that if a district identified a school for improvement after the beginning of the school year, that school must immediately begin offering public school choice (§200.32(f)). Alternative interpretations argue that since the statue provides that public school choice be implemented "no later than the first day of the school year following such identification," that this could mean the following year and not immediately. Districts have argued that these regulations would require them to alter the timelines for the administration of tests, analysis of the data to determine AYP, and the identification of schools in need of improvement. They also argued that the choice requirement conflicts with district choice processes already in place.

The narrow interpretation of the law will make it more difficult for states and districts, particularly low performing districts, to comply with the law. And, it raises a number of questions. What will happen to districts that cannot provide choice because they lack capacity?[7] Is it realistic to expect suburban or surrounding districts to step in and provide choice and if they do, can they do so at sufficient levels? What are the political consequences of identifying large numbers of low performing schools?

Conclusions and Implications

As the GAO report concluded in 2002, "states may not be well positioned to meet the deadlines for implementing the additional requirements in the 2001 legislation." NCLB has forced states to make significant modifications to existing testing and accountability

[7] To meet the capacity requirement, the administration suggested that districts build more schools or hire more teachers.

systems and to accelerate the timelines for developing and implementing these systems. Yet states may not have all the assessments they need or the data management systems in place to handle the data requirements. States may lack the capacity to provide technical assistance since traditionally, this has not been a state function. Moreover, NCLB leaves little flexibility for waivers from meeting many of the requirements.

To implement the changes enacted by NCLB will require political support from state and local officials, coordination and cooperation across levels of government, local buy-in, and professional and technical expertise to interpret, administer and manage the new programs and data systems. However, both the political support and professional expertise needed to carry out these requirements varies widely among the states. While NCLB is highly prescriptive, the legislative requirements may not be easily translated into programs that state and local officials can carry out. The extent to which the new federal requirements reinforce local priorities also varies across states, suggesting that some states may be more supportive of NCLB than others.

The Bush administration recognizes the political significance of educational policy and has moved aggressively to promote its education agenda with the American public. It seems less aware of the institutional and organizational impediments to dramatically changing state accountability systems and educational practice and does not have a well-articulated implementation strategy to address these issues. Its current strategy—to adhere strictly to implementation timelines and threatened to withhold state funds to states out of compliance—carries a number of risks for both states and the federal government. States may choose to go their own way if the requirements become too erroneous or the federal government may be forced to carry out its threats of withholding funds, thereby further exacerbating a state's fiscal situation. It's also unclear what the political and policy fallout will be if NCLB fails or what will happen to the poor students and poor schools who won't be able to meet the AYP targets.

Our preliminary research raises a number of questions about federal-state relations, which we plan to examine over the next few years as states implement NCLB. They include:

- How will the administration handle the potential political resistance from state political leaders?
- How will the state fiscal constraints interact with the costs of implementing NCLB? Will states divert state resources to cover the additional costs or concentrate on other priorities?
- How will the federal government enforce the new requirements? Will the administration adhere to strict federal oversight and the withholding of funds from non-compliant states or be more lenient?
- How will the administration's implementation strategy change over time?

Given the fact that federal priorities are constantly subject to legislative and appropriations decisions by a Congress that is generally far more responsive to state and local preferences than standards set in federal agencies, we expect serious conflict and significant changes in policy over time.

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Appendix

Required Elements for State Accountability Systems

Principle 1: All schools

1.1 Accountability system includes all schools and districts in the state.
1.2 Accountability system holds all schools to the same criteria.
1.3 Accountability system incorporates the academic achievement standards.
1.4 Accountability system provides information in a timely manner.
1.5 Accountability system includes report cards.
1.6 Accountability system includes rewards and sanctions.

Principle 2: All Students

2.1 The accountability system includes all students.
2.2 The accountability system has a consistent definition of full academic year.
2.3 The accountability system properly includes mobile students.

Principle 3: Method of AYP Determinations

3.1 Accountability system expects all student subgroups, public schools, and LEAs to reach proficiency by 2013-14
3.2 Accountability system has a method for determining whether student subgroups, public schools, and LEAs made adequate yearly progress.
3.2a Accountability system establishes a starting point.
3.2b Accountability system establishes statewide annual measurable objectives.
3.3c Accountability system establishes intermediate goals.

Principle 4: Annual Decisions

4.1 The accountability system determines annually the progress of schools and districts.

Principle 5: Subgroup Accountability

5.1 The accountability system includes all the required student subgroups.
5.2 The accountability system holds schools and LEAs accountable for the progress of student subgroups.
5.3 The accountability system includes students with disabilities.
5.4 The accountability system includes limited English proficient students.
5.5 The State has determined the minimum number of students sufficient to yield statistically reliable information for each purpose for which disaggregated data were used.
5.6 The State has strategies to protect the privacy of individual students in reporting achievement results and in determining whether schools and LEAs are making adequate yearly progress on the basis of disaggregated subgroups.

Principle 6: Based on Academic Assessments

6.1 Accountability system is based primarily on academic assessments.

Principle 7: Additional Indicators

7.1 Accountability system includes graduation rate for high schools.

7.2 Accountability system includes an additional academic indicator for elementary and middle schools.

7.3 Additional indicators are valid and reliable.

Principle 8: Separate Decisions for Reading/Language Arts and Mathematics

8.1 Accountability system holds students, schools, and districts separately accountable for reading/language arts and mathematics.

Principle 9: System Validity and Reliability

9.1 Accountability system produces reliable decisions.

9.2 Accountability system produces valid decisions.

9.3 State has a plan for addressing changes in assessment and student population.

Principle 10: Participation Rate

10.1 Accountability system has a means for calculating the rate of participation in the statewide assessment.

10.2 Accountability system has a means for applying the 95% assessment criteria to student subgroups and small schools.

Source: U.S. Department of Education, Office of Elementary and Secondary Education

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